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SERVICE DATE - MARCH 26, 2004

SURFACE TRANSPORTATION BOARD

WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

STB DOCKET NO. AB-6 (Sub. No. 408X)

**Burlington Northern and Santa Fe Railway Co.—
Abandonment and Discontinuance of Service Exemption –
in Hamilton and Merrick Counties, NE**

BACKGROUND

In this proceeding, Burlington Northern and Santa Fe Railway Co. (BNSF) filed a notice of exemption under 49 CFR 1152.50 seeking exemption from the requirements of 49 U.S.C. 10903 to abandon and discontinue service over 15.6 miles of rail line located between BNSF Milepost 1.90, near Aurora, and BNSF Milepost 17.50, near Central City, in Hamilton and Merrick Counties, Nebraska. A map depicting the rail line in relationship to the area served is appended to the report. If the notice becomes effective, BNSF will be able to salvage track, ties and other railroad appurtenances and to dispose of the right-of-way.

DESCRIPTION OF THE LINE

The right-of-way was originally purchased by the Republican Valley Railroad, a predecessor to the Chicago Burlington and Quincy Railroad (CBQ), in 1905. In 1970, CBQ merged with separate railroads to become part of the Burlington Northern Railroad (BN), and in 1995, BN merged with the Atchison Topeka and Santa Fe Railway to become BNSF.

According to BNSF, the line traverses a predominately rural farming area, where corn and soybean are the major crops. BNSF describes the land adjacent to the right-of-way as flat to gently rolling and hilly in places. The line connects the towns of Aurora, Marquette, Central City, and the railroad station of Overland. The line crosses the Platte River just south of Central City. The right-of-way is 100 feet in width; however, BNSF states that the station grounds can vary in width.

BNSF states that there has been no local traffic on the line for at least two years and no overhead traffic moves over the line. Abandonment of the line will allow for the elimination of 17 public crossings and 20 private crossings.

According to BNSF, there are six bridges in the immediate area of the proposed abandonment that are 50 years old or older. These bridges were constructed between 1922 and 1933 and range from 8 feet to 124 feet in length.

Upon receiving authority to abandon the line, BNSF intends to remove the remaining rail, track material, and crossties; however, the roadbed will be left intact. SEA contacted BNSF on March 16, 2004, and a representative stated that the railroad has no plans for any clearing or grading activities.

ENVIRONMENTAL REVIEW

BNSF submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage and disposition of the right-of-way. BNSF served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Surface Transportation Board's environmental rules [49 CFR 1105.7(b)]. SEA has reviewed and investigated the record in this proceeding.

The National Geodetic Survey has advised SEA that one geodetic station marker has been identified that may be affected by the proposed abandonment.

The U.S. Army Corps of Engineers, Omaha District, concluded that the proposed abandonment, as outlined by BNSF, would not involve the discharge of dredged or fill material in waters of the United States, including wetlands. Therefore, a Department of the Army permit under Section 404 of the Clean Water Act (33 U.S.C. 1344) would not be required.

The Nebraska Department of Environmental Quality in Lincoln, Nebraska (NE DEQ), has advised that a Construction General Stormwater Permit (CSW) discharge authorization number must be sought for projects that involve the disturbance of one acre of land or more anywhere in the United States. The NE DEQ has stated that the proposed project would likely exceed the threshold and recommended that the railroad seek CSW coverage. Accordingly, BNSF shall contact the NE DEQ (Michael Crisco at 402-471-2023) prior to commencement of any salvage activities on this project to determine whether a stormwater general permit is required.

The US Fish and Wildlife Service, Nebraska Field Office (US FWS), and the Nebraska Game and Parks Commission (NGPC) have submitted a number of comments on the proposed abandonment and discontinuance. According to both the US FWS and NGPC, the following Federally listed threatened and endangered species may occur within the proposed project area: bald eagles (*Haliaeetus leucocephalus*); interior least tern (*Sterna antillarum*); and piping plover (*Charadrius melodus*). In addition, NGPC has advised SEA that the proposed abandonment is within the range of the Federally endangered whooping crane (*Grus Americana*); Federally threatened western prairie fringed orchid (*Platanthera praeclara*); and state threatened small white lady's slipper (*Cypripedium candidum*).

According to the US FWS, bald eagles migrate statewide and utilize riparian timber near streams, lakes, and wetlands as feeding and roosting sites. Migration and wintering activities occur from mid-November through April 1, and migrant and wintering bald eagles commonly occur along the Platte River in the vicinity of the BNSF bridge over the Platte River. The NGPC has stated that the proposed project is not likely to adversely affect this species. No mitigation measures were suggested.

The US FWS stated that least terns and piping plovers nest on unvegetated or sparsely vegetated sandbars in the Platte River, as well as sand and gravel piles resulting from mining operations along the Platte River. According to the US FWS, the BNSF Platte River crossing is part of a designated critical habitat for the Northern Great Plains breeding population of the piping plover. Habitat included in the federal designation is comprised solely of river channel and riverine sandbars within the high banks. If abandonment activities are planned in the vicinity of the BNSF Platte River bridge during the nesting season, which is from April 15 through August 15,¹ the US FWS has requested that BNSF contact it to determine if nesting least terns or piping plovers may be affected. In addition, the NGPC has stated that a qualified biologist should survey any sandpits or sandbars if they occur within the project site. If any nests are discovered within 0.5 miles of the track or track materials, NGPC requests that the railroad halt activities until after nesting season ends. Accordingly, SEA recommends that BNSF consult with the US FWS prior to commencement of any salvage activities, if such activities are planned in the vicinity of the Platte River bridge between April 15 and August 15. SEA will also recommend that BNSF consult with the NGPC prior to commencement of any salvage activities, in order to discuss implementation of a survey.

Under the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703-12, construction activities in grassland, wetland and woodland habitats, and those that occur on bridges that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. The provisions of the MBTA are applicable year-round; however, most migratory bird nesting activity in Nebraska occurs between April 1 and July 15.² If the proposed project is planned during the nesting season, or at any other time which may result in the taking of nesting migratory birds, the US FWS has recommended that a qualified biologist conduct a field survey during the nesting season to determine the presence of nesting migratory birds. The US FWS also recommended that the results of field surveys, along with information regarding the qualifications of the biologist(s) performing the surveys, be documented and maintained on file for potential review by the US FWS, if requested, until the proposed project has been completed. If a field survey identifies the existence of one or more active bird nests which cannot be avoided by the planned project activities, BNSF should contact the US FWS immediately for further

¹ NGPC stated that the nesting season for piping plover and interior least tern is from May 1 to August 15. However, SEA is basing its recommendation on the nesting season described in the US FWS letter, since it is slightly longer in duration.

² The US FWS noted that some migratory birds are known to nest outside of the primary nesting season.

guidance. Accordingly, BNSF shall consult with the USFWS prior to commencement of any salvage activities, in order to discuss implementation and documentation of field surveys.

The NGPC has stated that it does not expect the overall project to have direct impacts on bird species. However, NGPC expressed concern that track and material removal activities may impact these bird species temporarily and recommended that a survey be conducted for these species prior to any removal activities. Accordingly, SEA will recommend a consultation condition requiring that BNSF contact the NGPC prior to commencement of any salvage activities on this project.

The NGPC has stated that the location of the proposed abandonment is in the prime spring migration pattern for whooping cranes and sandhill cranes. NGPC advised that any track removal activity should be restricted to before or after the spring migration, which is from February 15 to April 15. According to the NGPC, the fall whooping crane migration through Nebraska typically occurs between September 25 and November 10; however, there are no suggested mitigation measures with regard to the fall migration, as long as there would be no construction or building activities. Additionally, NGPC has stated that the operation of heavy equipment could deter whooping cranes from using wetland habitats. To avoid this consequence, NGPC recommends that removal operations be suspended if whooping cranes are sighted in the wetlands. Once the cranes have left the area, removal activities can be resumed. Accordingly, SEA recommends the following conditions to avoid or minimize potential impacts to this species: 1) salvage activities shall be restricted to before or after the spring migration, which is from February 15 to April 15 and 2) salvage activities shall be suspended if whooping cranes are sighted in the wetlands but may be resumed once the cranes have left the area.

NGPC also recommended the following mitigation measures:

- Stabilize soils on the sideslope embankment during and after removal of the track materials to avoid sediment transport and deposition into adjacent wetlands and wet meadows. Such methods may include, but are not limited to, placement of mulch, silt barriers, erosion control mats. Establish a vegetation cover. Do not use invasive grass species, such as smooth brome (*Bromus inermis*) or reed canarygrass (*Phalaris arundinacea*).
- Do not construct temporary roadways in wetlands, wet meadows, or sandbars to access the site.
- Keep construction equipment out of wetland and sandbar areas. Stage equipment in dry upland sites only.

SEA will recommend that these mitigation measures be incorporated into BNSF's salvage operations.

The US FWS expressed concerns about unavoidable impacts that the proposed project might have on aquatic habitats, streams, and riparian habitats. Accordingly, SEA recommends a consultation condition requiring that BNSF contact the US FWS prior to commencement of any salvage activities.

The railroad states that the proposed abandonment would have no effect on wildlife sanctuaries, refuges, National or state parks or forests. NGPC states that it does not own any properties between Aurora and Central City that would be affected by the proposed abandonment. The U.S. Bureau of Land Management, Newcastle Field Office (BLM), states that the proposed abandonment will not affect any public lands (Federal lands) administered by the BLM.

According to BNSF, there are no known hazardous waste sites or hazardous material spill sites on the subject right-of-way.

BNSF states that the right-of-way may be suitable for trail use. According to the NGPC, the line is in the State Trails Plan for future development and local groups are interested in developing the right-of-way into a regional trail. However, no formal request for a public use condition or trails use condition has been submitted. The requirements for public use and trail use are discussed below.

The 1995 Trails Act and the Board's Environmental Review

The Trails Act, 16 U.S.C. 1247(d), gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad right-of-way that otherwise would be abandoned. The Trails Act is intended to preserve railroad rights-of-way for future railroad use.

Under the Trails Act and the Board's implementing procedures (49 CFR 1152.29), a state or local government or private organization can request a trail condition (known as a Certificate of Interim Trails Use (CITU))³ to begin the trail use process on a line approved for abandonment if the rail sponsor agrees to railbanking and provides a statement of willingness to assume responsibility for managing the right-of-way, for any legal liability arising out of its use, and for the payment of taxes. If the railroad agrees to negotiate, and no offer of financial assistance to continue rail freight service on the line is received, the Board imposes a NITU, which gives the rail sponsor time to negotiate an agreement with the railroad for interim trail use/railbanking. The Board has no involvement in the negotiations and does not analyze, approve, or set the terms of trail use agreements. The Board is not authorized to regulate activities over the actual trail. In short, the Board's jurisdiction under the Trails Act is ministerial.

The Board does not conduct an environmental review of a potential conversion to interim rail use/railbanking because it does not exercise sufficient Federal control so as to qualify as a major Federal action under NEPA. Only major actions by Federal agencies require environmental review.

³ This process allows railroad rights-of-way to be preserved by allowing interim trail use on lines that otherwise would be abandoned. In exempt abandonment procedures, it is a notice of interim trails use (NITU) that is issued rather than a CITU.

HISTORIC REVIEW

BNSF submitted an historic report as required by the Surface Transportation Board's environmental rules [49 CFR 1105.8(a)]. The railroad served the report on the Nebraska State Historical Society (the State Historic Preservation Officer or SHPO) pursuant to 49 CFR 1105.8(c). The SHPO has submitted comments stating that no historic properties listed in or eligible for inclusion in the National Register of Historic Places (National Register) would be affected by the proposed abandonment and discontinuance of service. (Log: 0312-029-01). SEA has reviewed the report and the information provided by the SHPO and concurs with the SHPO's comments.

If any archaeological remains are uncovered during the project activities, the SHPO requests that the railroad contact it immediately, so that an evaluation of the remains may be made, along with recommendations for future action.

CONDITIONS

SEA recommends that the following nine (9) environmental conditions be placed on any decision granting abandonment authority:

1. The National Geodetic Survey (NGS) has identified one (1) geodetic station marker that may be affected by the proposed abandonment. Therefore, BNSF shall notify NGS 90 days prior to salvage activities in order to plan for its relocation.
2. The Nebraska Department of Environmental Quality (NE DEQ) states that a Construction General Stormwater Permit (CSW) discharge authorization number must be sought for projects that involve the disturbance of one acre of land or more anywhere in the United States. Accordingly, BNSF shall, prior to any salvage activities, consult with the Nebraska Department of Environmental Quality (Michael Crisco at 402-471-2023) to determine if a stormwater general permit is required.
3. The U.S. Fish and Wildlife Service, Nebraska Field Office's (US FWS), has indicated that the proposed project is within range of the Federally threatened piping plover and Federally endangered least tern. If salvage activities are planned in the vicinity of the BNSF Platte River bridge during the nesting season, which is from April 15 through August 15, BNSF shall contact the US FWS (Wally Jobman 308-382-6468, ext. 16) to determine if nesting least terns or piping plovers may be affected.
4. The Nebraska Game and Parks Commission (NGPC) states that the proposed project is within range of the following Federally threatened or endangered species: bald eagles (*Haliaeetus leucocephalus*); interior least tern (*Sterna antillarum*); piping plover (*Charadrius melodus*); and whooping crane (*Grus Americana*). The NGCP recommended that a survey be conducted for these species prior to any salvage activities. Accordingly, SEA will recommend a

consultation condition requiring that BNSF contact the NGPC prior to commencement of any salvage activities on this project.

5. Based on provisions of the Migratory Bird Treaty Act, 16 U.S.C. 703-12, the US FWS has recommended that a qualified biologist conduct a field survey during the nesting season to determine the presence of nesting migratory birds. Accordingly, BNSF shall consult with the USFWS (Wally Jobman 308-382-6468, ext. 16) prior to commencement of any salvage activities, in order to discuss the implementation and documentation of field surveys.
6. The Nebraska Game and Parks Commission (NGPC) has stated that the location of the proposed abandonment is in the prime spring migration pattern for whooping cranes and sandhill cranes. Accordingly, SEA recommends the following conditions to avoid or minimize potential impacts to this species: 1) salvage activities shall be restricted to before or after the spring migration, which is from February 15 to April 15, and 2) salvage activities shall be suspended if whooping cranes are sighted in the wetlands but may be resumed once the cranes have left the area.
7. To address the concerns raised by the Nebraska Game and Parks Commission (NGPC), BNSF shall, prior to commencement of any salvage activities on this project, contact the NGPC (Julie Godberson 402-471-5444), concerning removal and salvage methods, procedures for using and storing construction equipment, and mitigation practices to be utilized during salvage activities to avoid soil erosion, including the revegetation of the right-of-way with certain flora.
8. The U.S. Fish and Wildlife Service, Nebraska Field Office (US FWS), has raised concerns regarding unavoidable impacts that the proposed project might have on aquatic habitats, streams, and riparian habitats. Accordingly, SEA recommends a consultation condition requiring that BNSF contact the US FWS (Wally Jobman 308-382-6468, ext. 16) prior to commencement of any salvage activities.
9. The Nebraska State Historical Society (the State Historic Preservation Office or SHPO) states that no historic properties would be affected by the proposed project. However, if any archaeological remains are uncovered during the project activities, BNSF shall contact the SHPO immediately.

CONCLUSIONS

Based on the information provided from all sources to date, we conclude that, as currently proposed, and if the recommended conditions are imposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another

operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of the petition for exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Services responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact the Office of Public Services directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Washington, DC 20423.

ENVIRONMENTAL COMMENTS

If you wish to file comments regarding this environmental assessment, send an **original and two copies** to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Christa Dean, who prepared this environmental assessment. **Please refer to Docket No. AB-6 (Sub No. 408X) in all correspondence addressed to the Board.** If you have any questions regarding this environmental assessment, please contact Christa Dean, the environmental contact for this case, by phone at (202) 565-1606, fax at (202) 565-9000, or e-mail at deanc@stb.dot.gov.

Date made available to the public: March 26, 2004.

Comment due date: **April 12, 2004.**

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams

Secretary

Attachment

AB-6 (SUB- NO 408X)

